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Government

Ethics Newsgram

Director's Column

I had planned to write this column on a different theme but the tragic attack of September 11 changed that, as it has changed so many things great and small in our lives. This tragedy has struck our families, our friends, our colleagues, our country, and has caused all of us to reflect more deeply upon what we hold most dear in our personal lives, our lives as citizens, and our lives in public service to the American people.

We live in a free and open society. Although some have seen this as a vulnerability to be exploited, it is really a source of our strength as a nation. We value a government that is fair, impartial, transparent and accountable, and we strive hard as we go about our work each day as government employees to live by these values.

Our hearts will be filled with grief and sadness for some time to come. But our



work must go on. Our job as ethics officials is to ensure that the missions of our agencies are not impeded by scandal

or allegations of misconduct. Those missions are of paramount importance at this critical moment in our history.

And so I encourage each of you to do all that you can to facilitate the work of your agency, especially in responding to this threat to the security and welfare of the American people. We can find solutions to issues that arise in our work that are ethically sound and that advance our agencies' missions, programs and operations.

We all have a role to play in helping our country at this time. We must resolve to go forward with even greater dedication to public service. If past is prologue, I believe that we will leave a legacy of which we can be justly proud.

Amy L. Comstock
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OGE Reschedules the 11th Annual Government Ethics Conference

The tragic events on the morning of September 11, 2001 forced OGE to cancel the Annual Government Ethics Conference in Norfolk, VA just as it had opened. On September 14, 2001, the OGE Director announced that she was rescheduling the 11th Annual Conference for December 4 through 6, 2001 both to demonstrate support for the Administration's vow that the United States Government will operate as usual and in recognition of the significant contribution the conference makes to the ethics program. The rescheduled [11th Annual Government Ethics Conference](#) will be held at the Cavalier Hotel in Virginia

Beach, VA. (See Memorandum dated [September 14, 2001](#).)

OGE anticipates that all the concurrent sessions previously scheduled for the September 2001 conference in Norfolk will be offered at Virginia Beach in December. Likewise, the Director has stated her desire that DAEs give preference to those individuals in their agencies who were scheduled to attend the Norfolk conference to attend this rescheduled conference.

The rescheduled 11th Annual Government Ethics Conference will serve as the FY

2002 conference, replacing the conference previously scheduled for September 2002. The 12th Annual Government Ethics Conference will be held in FY 2003.

inside:

White House Guidance	2
In Memoriam	2
Due Dates	2
EIFs	3
Training Regs	3
Ethics News Briefs	4
Advisory Letters	4

White House Guidance on Attendance at Olympic Events

On August 31, 2001, the White House Deputy Chief of Staff and the Counsel to the President issued a memorandum to all Cabinet members and agency heads outlining the policies for accepting free attendance and otherwise participating in the conduct of events taking place at the Salt Lake City Olympic Games. Noting the "very limited need for the presence of any Cabinet officials, agency heads, or other executive branch employees in Salt Lake City during the games," the memorandum advises that any employee's attendance should be consistent with the policies outlined in the memorandum and cleared by an agency general counsel or ethics official.

The memorandum specifically addresses circumstances where employees will be required to attend Olympic events as part of an "official delegation" in support of the President's or Vice President's attendance. In these circumstances employees may attend Olympic events free of charge.

Likewise where employees will be required to be present at sporting or other Olympic events due to the nature of their responsibilities, (e.g. federal law enforcement personnel) attendance will be deemed appropriate provided that the employee is engaged in official activities and not merely observing the games.

The memorandum further addresses other likely situations, such as offers of free tickets to sporting events and invitations to receptions and similar events. It reminds employees that the standards of conduct prohibit federal employees from accepting such gifts when offered by a prohibited source or because of the employee's official position, unless an appropriate exception applies. Employees are asked to treat such offers like any others they may receive throughout the year and to consult with their ethics officials to determine whether the offer may be properly accepted under the gift rules.

Agency ethics officials are deemed the first point of contact on any invitations and gifts offered in connection with the Olympic Games. If agency ethics officials have any questions about the application of the memorandum, they may contact Robert Cobb, Associate Counsel to the President, at 202-456-7900.

Don't Forget These Important Dates

The General Services Administration semi-annual travel report covering travel from non-Federal sources for the period of April 1 to September 30, 2001 is due to OGE by November 30, 2001.

The Annual Agency Ethics Questionnaire for 2001 is due to OGE by February 1, 2002.

In Memoriam Ernest M. Willcher

It is with profound sadness that the Office of Government Ethics reports the death of Ernie Willcher, a victim of the terrorist attack on the Pentagon on September 11, 2001. Ernie was a former ethics official in the Office of General Counsel at the Department of the Army. He had retired in April, after 25 years as a civilian employee at the Pentagon, and was working as a consultant for Booz, Allen & Hamilton. He and two other company employees were caught in the attack on the Pentagon while conducting a briefing for Army officials.

During his tenure with the Department of the Army, Ernie described his primary responsibility as "providing advice and assistance to Army Secretariat officials regarding any and every kind of issue connected to civilian employment with the Army." He also served as Ethics Counselor to the Army Science Board.

OGE staff remember Ernie as an agreeable, conscientious and generous man, and a knowledgeable and dedicated ethics official. He is survived by his wife, Shirley Willcher, and two sons. Ernie was 62 years old.

OGE extends its condolences to Ernie's family, his employer Booz, Allen & Hamilton, the Department of the Army and those within the ethics community who knew and worked with Ernie. We share your grief and your loss.

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We welcome any news and information related to Government ethics that you wish to bring to the attention of OGE and the executive agencies. We also welcome your candid critiques and suggestions. Quoting or reprinting materials contained in this publication is strongly encouraged and does not require OGE permission.

The Director of the Office of Government Ethics has determined that the publication of this periodical is necessary to the transaction of the public business of OGE, as required by law.

Ethics in Action

What is an EIF?

The term Excepted Investment Fund (EIF) is a concept created by statute and is solely a characterization for financial disclosure purposes. An EIF includes pooled investments such as mutual funds, common trust funds of a bank or other financial institution, defined contribution pension plans, investment trusts, and limited partnerships *if* they meet all of the following tests. An EIF must be a pooled investment vehicle which is:

1. widely held,
2. (a) publicly-traded (or available) or (b) widely diversified, *and*,
3. independently managed, that is, arranged so that the filer neither exercises control nor has the ability to exercise control over the financial interests held by the fund.

An investment must meet *either* 2(a) or 2(b), as well as 1 and 3, to qualify as an EIF. Many investment funds that focus on particular sectors of the economy are thus EIFs, but they may still present conflicts.

OGE has advised that funds that have more than 100 participants, such as private pension plans of medium and large employers, are considered widely held. Widely diversified means that the fund:

- ◆ holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. Government) and
- ◆ holds no more than 20% of the value of its portfolio in any particular economic or geographic sector.

What are the financial disclosure requirements for investments that qualify as EIFs?

The filer must disclose the name of the specific fund, along with the value of his (or his spouse's or dependent child's) share and any income. However, he may omit reporting:

- ◆ the investment's underlying holdings on Schedule A;
- ◆ separate types of income (interest, dividends, capital gains) on Schedule A (simply characterizing it all as EIF); and

- ◆ the transactions of underlying securities on Schedule B, part I. The filer should, however, report his own purchases and sales of shares of the investment fund. For example, filers would report buying shares in "The Japan Dividend Fund," but not what the fund's managers buy.

NOTE: Not all assets identified as "funds" are EIFs. Financial guides and the Internet are good resources for researching funds. If an investment fund is not an EIF, the filer must report the underlying holdings of the fund, as well as the separate types of income the fund generates.

Is an IRA an EIF?

No. An IRA is an individual account. It is self-directed and not widely held. Therefore, it does not qualify as an EIF. However, the underlying funds held in an IRA can be EIFs. Thus, "Fidelity Magellan Fund (IRA) could be an EIF, while "Shearson Lehman IRA account" would not qualify.

Is an investment club an EIF?

Investment clubs will not generally qualify as EIFs. They typically involve fewer than 100 participants, vary widely in organization and investment policy, and usually are not independently managed or publicly-traded.

Do Real Estate Investment Trusts (REITs) qualify as EIFs?

REITs manage diversified portfolios of real estate equity or mortgages, sell shares, and are **usually** publicly traded. REITs that are publicly traded or available will fit

the definition of EIF. However, REITs that are not publicly traded or available will not qualify as EIFs because they will not meet the alternative requirement of widely diversified. A filer must report the underlying assets of a non-publicly traded REIT.

Is it necessary to do a conflicts analysis on assets which are EIFs?

An EIF can be a conflicts problem unless it qualifies as a diversified mutual fund or diversified employee benefit plan under 5 C.F.R. part 2640, or is otherwise exempted from § 208 under part 2640.

Discussions Begin on Training Regulations

As announced in [DAEOgram DO-01-023 of August 14, 2001](#), OGE has begun focus group meetings with several agency ethics officials to discuss possible changes to the ethics training regulations at 5 C.F.R. §2638. The small group meetings have included discussions of various preliminary ideas for making the training regulations more effective and comprehensive, while identifying agency ethics officials' staffing and budgeting concerns. Specific topics discussed have included allowing agencies more discretion in determining who should receive training and using means other than financial disclosure filing status in making such determinations. The small group meetings have also discussed whether there should be additional training requirements for supervisors and employees of the Offices of Inspector General.

OGE anticipates holding at least two more focus group meetings before the end of the year. Once the focus group meetings have been completed, highlights of the discussions will be shared via a future DAEOgram. If you are interested in participating in a focus group, please contact Ferne Mosley, Special Assistant to the Director, at 202-208-8000, extension 1177, or by email at flmosley@oge.gov for further information.

Updated Calendar Now Available

OGE has revised its [Calendar of Ethics Reports](#) to help ethics practitioners keep track of the various reports due to OGE throughout the year. The new calendar is located on OGE's Web site at www.oge.gov under [Forms, Publications & Other Ethics Documents](#).

Ethics News Briefs

First Round Paperwork Notice for Qualified Trust Model Certificates & Documents:

Last summer, the Office of Government Ethics published a first round notice of its forthcoming request to the Office of Management and Budget for three-year renewal of clearance under the Paperwork Reduction Act of the set of twelve Ethics Act-qualified blind and diversified trust model certificates and model trust documents, with a minor revision. See [66 Federal Register 35243-35244](#) (July 3, 2001).

OGE Publishes Proposed Touhy Regulations:

In late September, OGE published in the Federal Register its proposed regulations on procedures regarding testimony by

OGE employees relating to official information and the production of official records in legal proceedings (so-called Touhy regulations, named after the case of Touhy v. Ragen, 340 U.S. 462 (1951)). These proposed procedural regulations would apply to OGE, not the entire executive branch. See [66 Federal Register 48824-48828](#) (September 24, 2001), with any comments due by November 23, 2001.



OGE Issues Informal Advisory Letters

The Office of Government Ethics has recently placed the [Informal Advisory Letters and Memoranda](#) for the first nine months of 2000 on the OGE web site at www.usoge.gov. These new materials which include letters and memoranda issued by OGE from January 1, 2000, through September 30, 2000, represent the first installment of the 2000 guidance. This guidance is available for viewing or downloading and can be found under the advisory opinion section.



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